

108TH CONGRESS  
1ST SESSION

# H. R. 1463

To provide benefits for certain individuals with injuries resulting from administration of a smallpox vaccine, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Mr. BURR (for himself, Mr. TAUZIN, Mr. BILIRAKIS, Mr. UPTON, Mr. NORWOOD, Mr. WHITFIELD, and Mr. PICKERING) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide benefits for certain individuals with injuries resulting from administration of a smallpox vaccine, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Smallpox Emergency  
5       Personnel Protection Act of 2003”.

1 **SEC. 2. SMALLPOX EMERGENCY PERSONNEL PROTECTION.**

2 Title II of the Public Health Service Act (42 U.S.C.  
3 202 et seq.) is amended by adding at the end the following  
4 part:

5 “PART C—SMALLPOX EMERGENCY PERSONNEL  
6 PROTECTION

7 **“SEC. 261. DEFINITIONS.**

8 “For purposes of this part:

9 “(1) VACCINE.—The term ‘vaccine’ or ‘smallpox  
10 vaccine’ means vaccinia (smallpox) vaccines, includ-  
11 ing the Dryvax vaccine.

12 “(2) COVERED INDIVIDUAL.—The term ‘cov-  
13 ered individual’ means an individual—

14 “(A) who is a health care worker, law en-  
15 forcement officer, firefighter, security per-  
16 sonnel, emergency medical personnel, other  
17 public safety personnel, or support personnel  
18 for such occupational specialities;

19 “(B) who is or will be functioning in a role  
20 identified in a State, local, or Department of  
21 Health and Human Services smallpox emer-  
22 gency response plan approved by the Secretary;  
23 and

24 “(C) to whom a vaccine is administered  
25 pursuant to such approved plan—

1 “(i) during the effective period of the  
2 Declaration (including the portion of such  
3 period before the enactment of this part);  
4 and

5 “(ii) not later than the latest of—

6 “(I) 180 days after the effective  
7 date of the initial interim final regula-  
8 tions implementing this part;

9 “(II) 120 days after becoming an  
10 individual in an occupation described  
11 in subparagraph (A); or

12 “(III) 120 days after becoming  
13 an individual identified as a member  
14 of a smallpox emergency response  
15 plan described in subparagraph (B).

16 “(3) COVERED INJURY.—The term ‘covered in-  
17 jury’ means an injury, disability, illness, condition,  
18 or death (other than a minor injury such as minor  
19 scarring or minor local reaction) determined, pursu-  
20 ant to the procedures established under section 262,  
21 to have been sustained by an individual as the direct  
22 result of—

23 “(A) administration to the individual of a  
24 vaccine during the effective period of the Dec-  
25 laration; or

1           “(B) accidental vaccinia inoculation of the  
2 individual in circumstances in which—

3           “(i) the vaccinia is contracted during  
4 the effective period of the Declaration or  
5 within 30 days after the end of such pe-  
6 riod;

7           “(ii) smallpox vaccine has not been  
8 administered to the individual; and

9           “(iii) the individual has resided with,  
10 or has been in contact with, an individual  
11 who is (or who was accidentally inoculated  
12 by) a covered individual.

13           “(4) DECLARATION.—The term ‘Declaration’  
14 means the Declaration Regarding Administration of  
15 Smallpox Countermeasures issued by the Secretary  
16 on January 24, 2003, and published in the Federal  
17 Register on January 28, 2003.

18           “(5) EFFECTIVE PERIOD OF THE DECLARA-  
19 TION.—The term ‘effective period of the Declara-  
20 tion’ means the effective period specified in the Dec-  
21 laration, unless extended by the Secretary.

22           “(6) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
23 individual’ means an individual who is (as deter-  
24 mined in accordance with section 262)—

1           “(A) a covered individual who sustains a  
2 covered injury in the manner described in para-  
3 graph (3)(A); or

4           “(B) an individual who sustains a covered  
5 injury in the manner described in paragraph  
6 (3)(B).

7           “(7) SMALLPOX EMERGENCY RESPONSE  
8 PLAN.—The term ‘smallpox emergency response  
9 plan’ or ‘plan’ means a response plan detailing ac-  
10 tions to be taken in preparation for a possible small-  
11 pox-related emergency during the period prior to the  
12 identification of an active case of smallpox either  
13 within or outside the United States.

14 **“SEC. 262. DETERMINATION OF ELIGIBILITY AND BENE-**  
15 **FITS.**

16           “(a) IN GENERAL.—The Secretary shall establish  
17 procedures for determining, as applicable with respect to  
18 an individual—

19           “(1) whether the individual is an eligible indi-  
20 vidual;

21           “(2) whether an eligible individual has sus-  
22 tained a covered injury or injuries for which medical  
23 benefits or compensation may be available under sec-  
24 tions 264 and 265, and the amount of such benefits  
25 or compensation;

1           “(3) whether the covered injury or injuries of  
2           an eligible individual constitute a compensable dis-  
3           ability, or caused the individual’s death, for purposes  
4           of benefits under section 266.

5           “(b) COVERED INDIVIDUALS.—The Secretary may  
6           accept a certification, by a Federal, State, or local govern-  
7           ment entity or private health care entity participating in  
8           the administration of covered countermeasures under the  
9           Declaration, that an individual is a covered individual.

10          “(c) CRITERIA FOR REIMBURSEMENT.—

11           “(1) INJURIES SPECIFIED IN INJURY TABLE.—  
12           In any case where an injury or other adverse effect  
13           specified in the injury table established under section  
14           263 as a known effect of a vaccine manifests in an  
15           individual within the time period specified in such  
16           table, such injury or other effect shall be presumed  
17           to have resulted from administration of such vaccine.

18           “(2) OTHER DETERMINATIONS.—In making de-  
19           terminations other than those described in para-  
20           graph (1) as to the causation or severity of an in-  
21           jury, the Secretary shall employ a preponderance of  
22           the evidence standard and take into consideration all  
23           relevant medical and scientific evidence presented for  
24           consideration, and may obtain and consider the  
25           views of qualified medical experts.

1       “(d) DEADLINE FOR FILING REQUEST.—The Sec-  
2   retary shall not consider any request for a benefit under  
3   this part with respect to an individual, unless—

4               “(1) in the case of a request based on the ad-  
5       ministration of the vaccine to the individual, the in-  
6       dividual provides notice to the Secretary of an ad-  
7       verse effect of the vaccination not later than one  
8       year after the date of administration of the vaccine;  
9       or

10              “(2) in the case of a request based on acci-  
11       dental vaccinia inoculation, the individual provides  
12       notice to the Secretary of an adverse effect of such  
13       vaccination not later than two years after the date  
14       of the first symptom or manifestation of onset of the  
15       adverse effect.

16       “(e) REVIEW OF DETERMINATION.—

17              “(1) SECRETARY’S REVIEW AUTHORITY.—The  
18       Secretary may review a determination under this  
19       section at any time on the Secretary’s own motion  
20       or on application, and may affirm, vacate, or modify  
21       such determination in any manner the Secretary  
22       deems appropriate.

23              “(2) JUDICIAL AND ADMINISTRATIVE RE-  
24       VIEW.—No court of the United States, or of any  
25       State, District, territory or possession thereof, shall

1 have subject matter jurisdiction to review, whether  
2 by mandamus or otherwise, any action by the Sec-  
3 retary under this section. No officer or employee of  
4 the United States shall review any action by the Sec-  
5 retary under this section (unless the President spe-  
6 cifically directs otherwise).

7 **“SEC. 263. SMALLPOX VACCINE INJURY TABLE.**

8 “(a) SMALLPOX VACCINE INJURY TABLE.—

9 “(1) ESTABLISHMENT REQUIRED.—The Sec-  
10 retary shall establish by interim final regulation a  
11 table identifying adverse effects (including injuries,  
12 disabilities, illnesses, conditions, and deaths) that  
13 shall be presumed to result from the administration  
14 of (or exposure to) a smallpox vaccine, and the time  
15 period in which the first symptom or manifestation  
16 of onset of each such adverse effect must manifest  
17 in order for such presumption to apply.

18 “(2) AMENDMENTS.—The Secretary may  
19 amend by regulation the table established under  
20 paragraph (1). Amendments shall apply retroactively  
21 to claims pending at the time of promulgation of  
22 final amending regulations and to claims filed subse-  
23 quently. If the effect of such amendment is to per-  
24 mit an individual who was not, before such amend-  
25 ment, eligible for compensation under this part, such



1 individual may file a request for compensation or file  
2 an amended request for such compensation not later  
3 than one year after the effective date of such amend-  
4 ment in the case of an individual to whom the vac-  
5 cine was administered and two years in the case of  
6 a request for compensation based on accidental  
7 vaccinia inoculation.

8 **“SEC. 264. MEDICAL BENEFITS.**

9 “(a) IN GENERAL.—Subject to the succeeding provi-  
10 sions of this section, the Secretary shall make payment  
11 or reimbursement for medical items and services as rea-  
12 sonable and necessary to treat a covered injury of an eligi-  
13 ble individual. The Secretary may consider the Federal  
14 Employees Compensation Act (5 U.S.C. 8103) and its im-  
15 plementing regulations in determining the amount of such  
16 payment and the circumstances under which such pay-  
17 ments are reasonable and appropriate.

18 “(b) BENEFITS SECONDARY TO OTHER COV-  
19 ERAGE.—Payment or reimbursement for services or bene-  
20 fits under subsection (a) shall be secondary to any obliga-  
21 tion of the United States or any third party (including  
22 any State or local governmental entity, private insurance  
23 carrier, or employer) under any other provision of law or  
24 contractual agreement, to pay for or provide such services  
25 or benefits. The Secretary shall have the discretion to es-

1    establish mechanisms and procedures for providing the sec-  
2    ondary benefits under this section.

3    **“SEC. 265. COMPENSATION FOR LOST EMPLOYMENT IN-**  
4                                    **COME.**

5            “(a) IN GENERAL.—Subject to the succeeding provi-  
6    sions of this section, the Secretary shall provide compensa-  
7    tion to an eligible individual for loss of employment income  
8    incurred as a result of a covered injury, at the rate speci-  
9    fied in subsection (b).

10          “(b) AMOUNT OF COMPENSATION.—

11            “(1) IN GENERAL.—Compensation under this  
12    section shall be at the rate of  $66\frac{2}{3}$  percent of  
13    monthly employment income, except that such per-  
14    centage shall be 75 percent in the case of an indi-  
15    vidual who has one or more dependents. The Sec-  
16    retary may consider the Federal Employees Com-  
17    pensation Act (5 U.S.C. 8114 and 8115) and its im-  
18    plementing regulations in determining the amount of  
19    such payment and the circumstances under which  
20    such payments are reasonable and appropriate.

21            “(2) TREATMENT OF SELF-EMPLOYMENT IN-  
22    COME.—For purposes of this section, the term ‘em-  
23    ployment income’ includes income from self-employ-  
24    ment.

25          “(c) LIMITATIONS.—

1           “(1) BENEFITS SECONDARY TO OTHER COV-  
2           ERAGE.—Any compensation under subsection (a)  
3           shall be secondary to the obligation of the United  
4           States or any third party (including any State or  
5           local governmental entity, private insurance carrier,  
6           or employer), under any other law or contractual  
7           agreement, to pay compensation for loss of employ-  
8           ment income and shall not be made to the extent  
9           that compensation for loss of employment income  
10          has been made under such other obligations in an  
11          amount that equals or exceeds the rate specified in  
12          subsection (b)(1).

13          “(2) NO BENEFITS FOR DEATH OR PERMANENT  
14          AND TOTAL DISABILITY.—No payment shall be made  
15          under this section in compensation for loss of em-  
16          ployment income subsequent to the receipt by an eli-  
17          gible individual (or his survivor or survivors) of ben-  
18          efits under section 266 for death or permanent and  
19          total disability.

20          “(3) LIMIT ON TOTAL BENEFITS.—Total bene-  
21          fits paid to an individual under this section shall not  
22          exceed \$50,000 for any year, and the lifetime total  
23          of such benefits for the individual may not exceed an  
24          amount equal to the amount authorized to be paid  
25          under section 266.

1           “(4) WAITING PERIOD.—An eligible individual  
2           shall not be provided compensation under this sec-  
3           tion for the first 5 work days of disability.

4   **“SEC. 266. PAYMENT FOR DEATH AND PERMANENT, TOTAL**  
5           **DISABILITY.**

6           “(a) BENEFIT FOR PERMANENT AND TOTAL DIS-  
7   ABILITY.—The Secretary shall pay to an eligible individual  
8   who is determined to have a covered injury or injuries  
9   meeting the definition of disability in section 216(i) of the  
10   Social Security Act (42 U.S.C. 416(i)) an amount deter-  
11   mined under subsection (c), in the same manner as dis-  
12   ability benefits are paid pursuant to the PSOB program  
13   in section 1201(b) of the OCCSSA with respect to an eligi-  
14   ble public safety officer (except that payment shall be  
15   made to the parent or legal guardian, in the case of an  
16   eligible individual who is a minor or is subject to legal  
17   guardianship).

18          “(b) DEATH BENEFIT.—The Secretary shall pay, in  
19   the case of an eligible individual whose death is deter-  
20   mined to have resulted from a covered injury or injuries,  
21   a death benefit in the amount determined under sub-  
22   section (c) to the survivor or survivors in the same manner  
23   as death benefits are paid pursuant to PSOB program in  
24   section 1201 of the OCCSSA with respect to an eligible  
25   deceased (except that in the case of an eligible individual

1 who is a minor with no living parent, the legal guardian  
2 shall be considered the survivor in the place of the parent).

3 “(c) BENEFIT AMOUNT.—

4 “(1) IN GENERAL.—The amount of the dis-  
5 ability or death benefit under subsection (a) or (b)  
6 in a fiscal year shall equal the amount of the com-  
7 parable benefit calculated under the PSOB in such  
8 fiscal year, without regard to any reduction attrib-  
9 utable to a limitation on appropriations, but subject  
10 to paragraph (2).

11 “(2) REDUCTION FOR PAYMENTS FOR LOST EM-  
12 PLOYMENT INCOME.—The amount of the benefit as  
13 determined under paragraph (1) shall be reduced by  
14 the total amount of any benefits paid under section  
15 265 with respect to lost employment income.

16 “(d) BENEFIT IN ADDITION TO MEDICAL BENE-  
17 FITS.—A benefit under this section shall be in addition  
18 to any amounts received by an eligible individual under  
19 section 264.

20 “(e) LIMITATIONS.—

21 “(1) DISABILITY BENEFITS.—Except as pro-  
22 vided in paragraph (3), no benefit is payable under  
23 subsection (a) with respect to the disability of an eli-  
24 gible individual if—

1           “(A) a disability benefit is paid or payable  
2           with respect to such individual under the  
3           PSOB; or

4           “(B) a death benefit is paid or payable  
5           with respect to such individual under subsection  
6           (b) or the PSOB.

7           “(2) DEATH BENEFITS.—No benefit is payable  
8           under subsection (b) with respect to the death of an  
9           eligible individual if—

10           “(A) a disability benefit is paid with re-  
11           spect to such individual under subsection (a) or  
12           the PSOB; or

13           “(B) a death benefit is paid or payable  
14           with respect to such individual under the  
15           PSOB.

16           “(3) EXCEPTION IN THE CASE OF A LIMITA-  
17           TION ON APPROPRIATIONS FOR DISABILITY BENE-  
18           FITS UNDER PSOB.—In the event that disability ben-  
19           efits available to an eligible individual under the  
20           PSOB program are reduced because of a limitation  
21           on appropriations, and such reduction would affect  
22           the amount that would be payable under paragraph  
23           (1) or (2) without regard to this paragraph, benefits  
24           shall be available under subsection (a) or (b) to the  
25           extent necessary to ensure that such individual (or

1 his survivor or survivors) receives a total amount  
2 equal to the amount described in subsection (c).

3 “(f) REFERENCES.—References in this section—

4 “(1) to the Public Safety Officers’ Benefits  
5 Program or PSOB are references to the program  
6 under part L, subpart 1 of title I of the OCCSSA;  
7 and

8 “(2) to the OCCSSA are to the Omnibus Crime  
9 Control and Safe Streets Act of 1968 (42 U.S.C.  
10 3796 et seq.).

11 **“SEC. 267. ADMINISTRATION.**

12 “(a) ADMINISTRATION BY AGREEMENT WITH OTHER  
13 AGENCY OR AGENCIES.—The Secretary may administer  
14 any or all of the provisions of this part through Memo-  
15 randum of Agreement with the head of any appropriate  
16 Federal agency.

17 “(b) REGULATIONS.—The head of the agency admin-  
18 istering this part or provisions thereof (including any  
19 agency head administering such Act or provisions through  
20 a Memorandum of Agreement under subsection (a)) may  
21 promulgate such implementing regulations as may be  
22 found necessary and appropriate. Initial implementing  
23 regulations may be interim final regulations.

1 **“SEC. 268. PARTICIPANT EDUCATION REGARDING SMALL-**  
2 **POX EMERGENCY RESPONSE PLANS.**

3 “In reviewing State, local, or Department of Health  
4 and Human Services smallpox emergency response plans  
5 described in section 261, the Secretary shall ensure that  
6 such plans are consistent with guidelines of the Centers  
7 for Disease Control and Prevention with respect to the  
8 education of individual participants (including information  
9 as to the voluntary nature of the program and the avail-  
10 ability of potential benefits under this part), and the ade-  
11 quate screening of individuals for vaccine contraindica-  
12 tions.

13 **“SEC. 269. AUTHORIZATION OF APPROPRIATIONS.**

14 “For the purpose of carrying out this part, there are  
15 authorized to be appropriated such sums as may be nec-  
16 essary for each of the fiscal years 2003 through 2007, to  
17 remain available until expended, including administrative  
18 costs and costs of provision and payment of benefits. The  
19 Secretary’s payment of any benefit under section 264,  
20 265, or 266 shall be subject to the availability of appro-  
21 priations under this section.

22 **“SEC. 270. RELATIONSHIP TO OTHER LAWS.**

23 “Except as explicitly provided herein, nothing in this  
24 part shall be construed to override or limit any rights an  
25 individual may have to seek compensation, benefits, or re-  
26 dress under any other provision of Federal or State law.”.



1 **SEC. 3. AMENDMENTS TO PROVISION REGARDING TORT LI-**  
 2 **ABILITY FOR ADMINISTRATION OF SMALL-**  
 3 **POX COUNTERMEASURES.**

4 (a) AMENDMENT TO ACCIDENTAL VACCINIA INOCU-  
 5 LATION PROVISION.—Section 224(p)(2)(C)(ii)(II) of such  
 6 Act (42 U.S.C. 233(p)(2)(C)(ii)(II)) is amended by strik-  
 7 ing “resides or has resided with” and inserting “has re-  
 8 sided with, or has had contact with,”.

9 (b) DEEMING ACTS AND OMISSIONS TO BE WITHIN  
 10 SCOPE OF EMPLOYMENT.—Section 224(p)(2) of such Act  
 11 (42 U.S.C. 233(p)(2)) is amended by adding at the end  
 12 the following new subparagraph:

13 “(D) ACTS AND OMISSIONS DEEMED TO BE  
 14 WITHIN SCOPE OF EMPLOYMENT.—

15 “(i) IN GENERAL.—In the case of a  
 16 claim arising out of alleged transmission of  
 17 vaccinia from an individual described in  
 18 clause (ii), acts or omissions by such indi-  
 19 vidual shall be deemed to have been taken  
 20 within the scope of such individual’s office  
 21 or employment for purposes of—

22 “(I) subsection (a); and

23 “(II) section 1346(b) and chap-  
 24 ter 171 of title 28, United States  
 25 Code.

1 “(ii) INDIVIDUALS TO WHOM DEEMING  
2 APPLIES.—An individual is described by  
3 this clause if—

4 “(I) vaccinia vaccine was admin-  
5 istered to such individual as provided  
6 by subparagraph (B); and

7 “(II) such individual was within  
8 a category of individuals covered by a  
9 declaration under subparagraph  
10 (A)(i).”.

11 (c) EXHAUSTION; EXCLUSIVITY; OFFSET.—Section  
12 224(p)(3) of such Act (42 U.S.C. 233(p)(3)) is amended  
13 to read as follows:

14 “(3) EXHAUSTION; EXCLUSIVITY; OFFSET.—

15 “(A) EXHAUSTION.—

16 “(i) IN GENERAL.—A person may not  
17 bring a claim under this subsection unless  
18 such person has received a determination  
19 about remedies available under section  
20 262.

21 “(ii) TOLLING OF STATUTE OF LIM-  
22 TATIONS.—The time limit for filing a claim  
23 under this subsection, or for filing an ac-  
24 tion based on such claim, shall be tolled

1 during the pendency of a determination by  
2 the Secretary under section 262.

3 “(iii) CONSTRUCTION.—This sub-  
4 section shall not be construed as super-  
5 seding or otherwise affecting the applica-  
6 tion of a requirement, under chapter 171  
7 of title 28, United States Code, to exhaust  
8 administrative remedies.

9 “(B) EXCLUSIVITY.—The remedy provided  
10 by subsection (a) shall be exclusive of any other  
11 civil action or proceeding for any claim or suit  
12 this subsection encompasses, except for a pro-  
13 ceeding under part C of this title.

14 “(C) OFFSET.—The value of all compensa-  
15 tion and benefits provided under part C of this  
16 title for an incident or series of incidents shall  
17 be offset against the amount of an award, com-  
18 promise, or settlement of money damages in a  
19 claim or suit under this subsection based on the  
20 same incident or series of incidents.”.

21 (d) REQUIREMENT TO COOPERATE WITH UNITED  
22 STATES.—Section 224(p)(5) of such Act (42 U.S.C.  
23 233(p)(5)) is amended in the caption by striking “DE-  
24 FENDANT” and inserting “COVERED PERSON”.

1 (e) AMENDMENT TO DEFINITION OF COVERED  
 2 COUNTERMEASURE.—Section 224(p)(7)(A)(i)(II) of such  
 3 Act (42 U.S.C. 233(p)(7)(A)(i)(II)) is amended to read  
 4 as follows:

5 “(II) used to control or treat the  
 6 adverse effects of vaccinia inoculation  
 7 or of administration of another cov-  
 8 ered countermeasure; and”.

9 (f) AMENDMENT TO DEFINITION OF COVERED PER-  
 10 SON.—Section 224(p)(7)(B) of such Act (42 U.S.C.  
 11 233(p)(7)(B)) is amended—

12 (1) by striking “includes any person” and in-  
 13 serting “means a person”;

14 (2) in clause (ii)—

15 (A) by striking “auspices” and inserting  
 16 “auspices—”;

17 (B) by redesignating “such counter-  
 18 measure” and all that follows as clause (I) and  
 19 indenting accordingly; and

20 (C) by adding at the end the following:

21 “(II) a determination was made  
 22 as to whether, or under what cir-  
 23 cumstances, an individual should re-  
 24 ceive a covered countermeasure;

1 “(III) the immediate site of ad-  
2 ministration on the body of a covered  
3 countermeasure was monitored, man-  
4 aged, or cared for; or

5 “(IV) an evaluation was made of  
6 whether the administration of a coun-  
7 termeasure was effective;”;

8 (3) in clause (iii) by striking “or”;

9 (4) by striking clause (iv) and inserting the fol-  
10 lowing:

11 “(iv) a State, a political subdivision of  
12 a State, or an agency or official of a State  
13 or of such a political subdivision, if such  
14 State, subdivision, agency, or official has  
15 established requirements, provided policy  
16 guidance, supplied technical or scientific  
17 advice or assistance, or otherwise super-  
18 vised or administered a program with re-  
19 spect to administration of such counter-  
20 measures;

21 “(v) in the case of a claim arising out  
22 of alleged transmission of vaccinia from an  
23 individual—

24 “(I) the individual who allegedly  
25 transmitted the vaccinia, if vaccinia

1 vaccine was administered to such indi-  
2 vidual as provided by paragraph  
3 (2)(B) and such individual was within  
4 a category of individuals covered by a  
5 declaration under paragraph (2)(A)(i);  
6 or

7 “(II) an entity that employs an  
8 individual described by clause (I) or  
9 where such individual has privileges or  
10 is otherwise authorized to provide  
11 health care;

12 “(vi) an official, agent, or employee of  
13 a person described in clause (i), (ii), (iii),  
14 or (iv);

15 “(vii) a contractor of, or a volunteer  
16 working for, a person described in clause  
17 (i), (ii), or (iv), if the contractor or volun-  
18 teer performs a function for which a per-  
19 son described in clause (i), (ii), or (iv) is  
20 a covered person; or

21 “(viii) an individual who has privileges  
22 or is otherwise authorized to provide health  
23 care under the auspices of an entity de-  
24 scribed in clause (ii) or (v)(II).”.

1 (g) AMENDMENT TO DEFINITION OF QUALIFIED  
2 PERSON.—Section 224(p)(7)(C) of such Act (42 U.S.C.  
3 233(p)(7)(C)) is amended—

4 (1) by designating “is authorized to” and all  
5 that follows as clause (i) and indenting accordingly;

6 (2) by striking “individual who” and inserting  
7 “individual who—”; and

8 (3) by striking the period and inserting “; or

9 “(ii) is otherwise authorized by the  
10 Secretary to administer such counter-  
11 measure.”.

12 (h) DEFINITION OF “ARISING OUT OF ADMINISTRA-  
13 TION OF A COVERED COUNTERMEASURE”.—Section  
14 224(p)(7) of such Act (42 U.S.C. 233(p)(7)) is amended  
15 by adding at the end the following new subparagraph:

16 “(D) ARISING OUT OF ADMINISTRATION  
17 OF A COVERED COUNTERMEASURE.—The term  
18 ‘arising out of administration of a covered  
19 countermeasure’, when used with respect to a  
20 claim or liability, includes a claim or liability  
21 arising out of—

22 “(i) determining whether, or under  
23 what conditions, an individual should re-  
24 ceive a covered countermeasure;

1 “(ii) obtaining informed consent of an  
2 individual to the administration of a cov-  
3 ered countermeasure;

4 “(iii) monitoring, management, or  
5 care of an immediate site of administration  
6 on the body of a covered countermeasure,  
7 or evaluation of whether the administration  
8 of the countermeasure has been effective;  
9 or

10 “(iv) transmission of vaccinia virus by  
11 an individual to whom vaccinia vaccine was  
12 administered as provided by paragraph  
13 (2)(B).”.

14 (i) TECHNICAL CORRECTION.—Section  
15 224(p)(2)(A)(ii) of such Act (42 U.S.C. 233(p)(2)(A)(ii))  
16 is amended by striking “paragraph (8)(A)” and inserting  
17 “paragraph (7)(A)”.

18 (j) EFFECTIVE DATE.—This section shall take effect  
19 as of November 25, 2002.

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